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FILED

JUL 16 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 FLEAR STEPHEN SCHMID, CSB NO. 96089  
2 ATTORNEY AT LAW  
3 177 POST STREET, SUITE 890  
4 SAN FRANCISCO, CA 94108  
5 TELEPHONE: (415) 788-5957  
6 FACSIMILE: (415) 788-5958

7 Attorneys for Plaintiffs  
8 ROSEMARY JENSEN and RANDY JENSEN

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

CV 08

JCS  
3440

11 ROSEMARY JENSEN AND RANDY  
12 JENSEN,

13 Plaintiffs,

14 v.

15 COUNTY OF SONOMA,

16 Defendant.

No.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR VIOLATION  
OF CIVIL RIGHTS AND FOR RELIEF  
UNDER C.C.P. §1094.5  
[Jury Trial Demanded]

17  
18 Plaintiffs, ROSEMARY JENSEN and RANDY JENSEN, allege as follows:

19 JURISDICTION AND VENUE

20 1. This action arises out of violations of plaintiffs' civil rights under 42 U.S.C.  
21 §1983. Jurisdiction is proper under 28 U.S.C. §1357, and supplemental jurisdiction is  
22 proper under 28 U.S.C. §1367. This court is the proper venue for this action pursuant to  
23 28 U.S.C. §1391(b) in that defendants reside in this judicial district and all of the events  
24 or omissions giving rise to the claim occurred within this judicial district.

25 PARTIES

26 2. Plaintiffs are Rosemary Jensen and Randy Jensen (hereinafter collectively  
27 referred to as "plaintiffs"), all of whom are citizens of the United States, citizens of the  
28 State of California and residents of the County of Sonoma, California.



1 use was permissible under the zoning ordinance.

2 9. The County conducted the meeting in a fashion to totally obstruct,  
3 interfere, deny, deprive, and thwart plaintiffs' constitutional right to have a meaningful  
4 opportunity to be heard before an impartial decision maker. At the hearing, the County  
5 was contemptuous of plaintiffs and plaintiffs' counsel, were disruptive of plaintiffs'  
6 attempt to present their case, did not afford plaintiffs a reasonable opportunity to be  
7 heard and present their case, tried to intimidate plaintiffs and their counsel from  
8 presenting their case, and generally conducted the hearing in a manner not comporting  
9 to due process.

10 10. The hearing was conducted with total disregard of any organized fashion  
11 for presenting and rebutting evidence. Moreover, the County published policies  
12 unconstitutionally put the burden of proof on plaintiffs to prove the allegations against  
13 them as false, in clear contravention to due process. The County interfered with and  
14 denied plaintiffs' right to cross-examine witnesses. The hearing officer was clearly  
15 biased, prejudiced, predisposed against and contemptuous of plaintiffs and their rights,  
16 and prejudged the facts prior to the commencement of the hearing, and the hearing  
17 officer had a financial incentive to find against plaintiffs and had a financial stake in the  
18 outcome, under the County's policies.

19 11. Due to the way the hearing was conducted by the County, not only were  
20 plaintiffs denied their due process rights, both procedural and substantive, they were  
21 denied their First Amendment rights to petition to redress their grievances, due to the  
22 biased, obstructive and scornful manner in which the County conducted the meeting.  
23 The cumulative effect of the due process denials at the hearing is to deny plaintiffs  
24 meaningful access to the court.

25 12. After the hearing, an "Decision and Administrative Order" was issued on  
26 April 18, 2008 declaring the existence of violations on plaintiffs' property and ordered  
27 the abatement thereof by plaintiffs, the imposition of \$8,257.00 in civil penalties, with  
28 further penalties to accrue if not abated within 45 days, and impositions of costs of

1 \$2,973.75, and further directing a lien be placed on plaintiffs' property for abatement  
2 penalties costs incurred by the County, the latter of which constitutes a significant  
3 interference with and seizure of plaintiffs' property without a warrant. The civil penalties  
4 were assessed in part due to plaintiffs' exercising their First Amendment rights and are  
5 grossly excessive.

6 13. Said abatement order was and is unconstitutional, and in violation of  
7 plaintiffs' constitutional rights, impaired the contract represented by the stipulated  
8 judgment, and also was not based upon substantial evidence and in fact was contrary to  
9 the evidence presented.

10 14. The administrative order and the activities of the County present a clear  
11 and immediate threat of illegal seizure of plaintiffs' personal property in violation of the  
12 Fourth Amendment of the United States Constitution and unless enjoined, the County  
13 will proceed to unlawfully and unconstitutionally seize and destroy plaintiffs' personal  
14 property in violation of the Fourth Amendment.

15 15. By the foregoing acts, plaintiffs were deprived (or will be deprived unless  
16 enjoined) by the County of their constitutional rights as follows

- 17 a) Their right of notice and meaningful opportunity to be heard by an  
18 impartial decision maker;
- 19 b) Their right against impairment of contract, to wit the stipulated civil  
20 judgment recognizing their grandfathered use of their property;
- 21 c) Their First Amendment Rights to free speech and right to petition;
- 22 d) Their Fifth, Ninth, and Fourteenth Amendment rights to not be  
23 denied liberty and property without due process of the law,  
24 including their right to carry on a lawful business and a common  
25 trade and their right not to be subjected to malicious, arbitrary and  
26 capricious use of governmental authority and regulation;
- 27 e) Their Fourth Amendment right against unreasonable seizure;
- 28 f) Their Fifth Amendment right against excessive fines and

1 punishment; and

2 g) Their right to equal protection of the law.

3 16. Further, plaintiffs were deprived by the County of the corresponding rights  
4 afforded them under the California Constitution including their right to have, own, hold  
5 and defend real and personal property and be free of unreasonable seizures, the right  
6 to privacy, and the right to carry on a lawful business.

7 17. The County has a policy, practice and custom which foster, promote,  
8 condone, and further the conduct that the County inflicted on plaintiffs as above  
9 described. In addition, the County ratified and approved its acts, thereby making the  
10 acts of the County the official practice, custom, and policy of the County.

11 18. As a direct and proximate result of the acts of the County, plaintiffs have  
12 suffered general and special damages, including but not limited to emotional distress,  
13 humiliation, embarrassment, stress, anxiety, and physical upset to their central nervous  
14 system, and personal injury, all in an amount according to proof but in excess of  
15 \$500,000.00. Further, plaintiffs are entitled to attorney fees.

16 19. The County will continue to violate their constitutional rights, and  
17 accordingly, plaintiffs will suffer irreparable damages unless the County is enjoined from  
18 such illegal conduct..

19 **COUNT 2**  
20 **[Violation of California Constitution, Article I, Section 1]**

21 20. Plaintiffs incorporate and reallege as if set forth in whole, the allegations of  
22 paragraphs 1 through 19 above.

23 21. The acts of the County violated plaintiffs rights under the California  
24 Constitution, Article I, Section 1. As a direct and proximately result thereof, plaintiffs  
25 have suffered damages in the amount according to proof, but in excess of \$500,000.00.

26 22. Further, the County threatens to continue to violate said rights, and  
27 accordingly, plaintiffs will suffer irreparable damage unless the County is enjoined from  
28 violating their rights under the California Constitution, Article I, Section 1.

**COUNT 3**  
**[Relief Under California Code of Civil Procedure §1094.5]**

23. Plaintiffs petition this Court for an order as hereinafter requested under Code of Civil Procedure §1094.5, directed to the County of Sonoma, and by this verified complaint allege as follows:

24. Plaintiffs incorporate and reallege as if set forth in whole, the allegations of paragraphs 1 through 22 above.

25. Plaintiffs are beneficially interested in and aggrieved by the defendants' wrongful and unconstitutional conduct as alleged herein.

26. At all times mentioned herein, defendants have been and are now the agencies charged with administering the Napa County Zoning Ordinance.

27. On or about April 15, 2008, the Napa County Board of Supervisors conducted a hearing concerning abatement of alleged nuisances on the subject parcel. At the conclusion of said hearing, the Board voted to declare a "nuisance" and instructed plaintiffs to abate the nuisance and failing that the County would abate the "nuisance" at plaintiffs' expense. The Board further voted to subject the subject property to all expenses pertaining to the County's expenses in abating the alleged nuisance. Thereafter, the Chairman of the Board executed a resolution to said effect on April 15, 2008.

28. Said resolution and action by the Board of Supervisors are invalid under Code of Civil Procedure §1094.5, for the following reasons:

- a. Defendants proceeded in excess of its jurisdiction, in that they made erroneous determinations of law and acted in violation of plaintiffs' constitutional rights.
- b. Defendants failed to grant plaintiffs a fair hearing, as set forth above.
- c. Defendants committed a prejudicial abuse of discretion in that they misinterpreted the zoning ordinance, disregarded the stipulated



1 judgment, and failed to properly apply the law to the facts, illegally  
2 delegated their authority to County Counsel, and violated plaintiffs'  
3 constitutional rights as set forth above.

4 d. Defendants failed to proceed in the manner required by law  
5 because they issued their resolution without any substantial  
6 evidence before them and failed to afford plaintiffs due process as  
7 set forth above.

8 e. Defendants' resolution is not supported by substantive evidence.

9 f. Defendants proceeded in excess of their jurisdiction and  
10 prejudicially abused its discretion by failing to proceed in the  
11 manner required by law as alleged above.

12 g. Defendants' resolution is legally impermissible since the County is  
13 bound by the stipulated judgment which it constitutionally may not  
14 impair, and is judicially, collaterally, and equitably estopped from  
15 enforcing the resolution due to said judgment and plaintiffs'  
16 reasonable reliance thereupon.

17 29. Fundamental vested rights are involved in that plaintiffs' fundamental right  
18 to use their property and pursue their livelihood are at stake.

19 30. Plaintiffs have exhausted their available administrative remedies.

20 31. Plaintiffs do not have a plain, speedy, and adequate remedy in the  
21 ordinary course of law.

22 32. Plaintiffs have requested that a true and correct copy of the administrative  
23 record. A true and correct copy of the record will be lodged with the court before the  
24 hearing date.

25 WHEREFORE, plaintiffs pray judgment against defendants as follows:

26 1. Damages as against the County in an amount according to proof but in  
27 excess of \$500,000.00;

28 2. An order, under Code of Civil Procedure §1094.5, directed to defendants

1 and compelling defendants to set aside its decision dated April 18, 2008, and directing  
2 defendants to honor plaintiffs' vested and protected rights and interests in the property  
3 and use thereof;

4 3. An injunction issue directed to defendants and compelling defendants to  
5 set aside its decision dated April 18, 2008, and directing defendants to honor plaintiffs'  
6 vested and protected rights and interests in the property and use thereof;

7 4. Costs, interest and attorney fees; and

8 5. Such other relief be granted that the court considers proper and just.

9 DATED: July 16, 2008

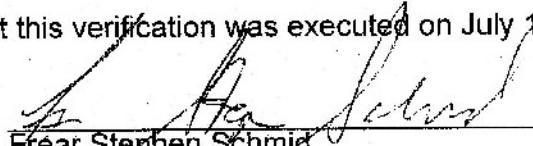
10   
11 Frear Stephen Schmid, Attorneys for  
12 Plaintiffs ROSEMARY JENSEN and  
13 RANDY JENSEN

14 **VERIFICATION**

15 I, FREAR STEPHEN SCHMID, am attorney for plaintiffs in this proceeding. I  
16 have read the foregoing pleading and upon information and belief, believe the facts  
17 alleged therein are true and on that ground alleged that they are true.

18 I submit this verification under California Code of Civil Procedure §446, as the  
19 plaintiffs herein are absent from the county of my office.


20 I declare under penalty of perjury under the laws of the State of California that  
21 the foregoing is true and correct and that this verification was executed on July 16,  
22 2008, at San Francisco, California.

23   
24 Frear Stephen Schmid

25 **JURY TRIAL DEMAND**

26 Plaintiffs demand a jury trial in the above matter.

27 DATED: July 16, 2008

28   
Frear Stephen Schmid, Attorneys for  
Plaintiffs DAVID D. WESNER, JANICE  
L. WESNER, and DON WESNER, INC.